

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

SYNCPOINT IMAGING, LLC

Plaintiff,

v.

NINTENDO OF AMERICA, INC., et al.

Defendants.

Case No. 2:15-cv-247-JRG-RSP

JURY TRIAL DEMANDED

**NON-PARTY KARL HANSEN’S EMERGENCY OPPOSED MOTION FOR
CLARIFICATION OF ORDER SETTING EVIDENTIARY HEARING, OR IN THE
ALTERNATIVE, MOTION FOR CONTINUANCE OF EVIDENTIARY HEARING**

COMES NOW, Non-Party Karl Hansen and files this Emergency¹ Motion for Clarification of Order Setting Evidentiary Hearing, or in the Alternative, Motion for Continuance of Evidentiary Hearing (“Motion”) and respectfully shows as follows:

On February 26, 2018, Defendants Nintendo of America, Inc. and Nintendo Co., Ltd. (collectively, “Nintendo”) filed a Motion for Exceptional Case Attorney Fees Under 35 U.S.C. § 285 (“285 Motion”) seeking attorneys’ fees against Plaintiff Syncpoint Imaging, LLC. Dkt. 290. Co-defendant PixArt Imaging, Inc. joined the 285 Motion thereafter. Dkt. 292. Among other things, the 285 Motion contained a generic and ill-supported request that Karl Hansen, the inventor of the patent-in-suit and owner of Plaintiff, be held jointly and severally liable for Nintendo’s attorneys’ fees in this case. Mr. Hansen, however, is not a party to this litigation and the Court has not added Mr. Hansen as a party to this lawsuit even though Nintendo requested

¹ This Motion is filed as an “Emergency” Motion because it would be impossible for Non-Party Karl Hansen to obtain the relief he seeks before the June 14th Hearing under the Court’s default briefing schedule. Accordingly, Mr. Hansen also seeks expedited briefing on this issue.

joinder in its 285 Motion. Dkt. 297 at p. 1-2 (“Nintendo, thus, moves to join Mr. Hansen and the Pia Firm as third-party defendants and to request that fees be awarded jointly and severally against all three.”).

On May 10, 2018, this Court issued an order setting the 285 Motion for evidentiary hearing on June 14, 2018 at 9:00 a.m. (“Order”). Dkt. 324. A fair reading of the Order requires only that Plaintiff and Defendant appear for the evidentiary hearing and it does not explicitly require Mr. Hansen to appear or to defend against Nintendo’s allegations or the relief sought against him as he is not a party to this case. Mr. Hansen intends to provide testimony as Plaintiff’s corporate representative at the hearing, but is not “appearing” as a party in this case.

On May 31, 2018, Mr. Hansen engaged the undersigned counsel to defend him, if necessary, against Nintendo’s allegations in the 285 Motion that seek to hold him personally liable.² The undersigned counsel does not yet have access to the sealed, unredacted 285 Motion or related briefing; the undersigned counsel also needs sufficient time to confer with his client, take appropriate discovery, and/or conduct the legal research necessary to properly defend against Nintendo’s request to hold this non-party jointly and severally liable. Out of an abundance of caution, and so that Mr. Hansen may effectively defend himself against Nintendo’s allegations only if absolutely necessary, Mr. Hansen respectfully requests that the Court clarify or supplement its Order to expressly indicate that the Court will not decide whether to hold Mr. Hansen personally liable per Defendants’ request unless and until (1) the Defendants first establish this case is exceptional as to Plaintiff after hearing evidence at the June 14th Hearing; (2) the amount of attorneys’ fees owed, if any, is determined by the Court after hearing evidence at the June 14th Hearing; and (3) most importantly, Mr. Hansen is added as a party to this case,

² For clarity’s sake, the undersigned counsel does not represent Plaintiff or its counsel of record.

served with process, and allowed a reasonable amount of time to meet with his attorney, take discovery and/or conduct legal research necessary to present his defenses to the Court if and when necessary. The most efficient way to do this is to expressly deny without prejudice Nintendo's request to hold Mr. Hansen jointly and severally liable until after the June 14th hearing and allow renewal only if the Court first determines that the case is "exceptional" after the June 14th Hearing. Such clarification will prevent injustice, facilitate due process, and conserve judicial resources and non-party time and expense.

Mr. Hansen does not wish to delay the June 14th Hearing as to Plaintiff and Defendants because he does not believe this is an exceptional case, much less one that would entitle Defendants to pierce the corporate veil of Plaintiff. Thus, Mr. Hansen requests that the June 14th Hearing be continued only if the Court intends to deny Mr. Hansen's primary request for relief above and entertain Nintendo's request that Mr. Hansen be jointly and severally liable for attorneys' fees at the June 14th Hearing. In that case, Mr. Hansen respectfully requests a 45 day continuance of the June 14th hearing for all the reasons identified above.

WHEREFORE, PREMISES CONSIDERED, Non-Party Karl Hansen requests that the Motion be granted.

DATED: June 5, 2018

Respectfully submitted,

/s/ Stafford Davis
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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on June 5, 2018.

/s/ Stafford Davis
Stafford Davis

CERTIFICATE OF CONFERENCE

On June 4, 2018, in compliance with L.R. CV-7(h), I conferred with counsel for Nintendo, Grant Kinsel, who indicated that Defendant is opposed to this Motion. I also conferred with counsel for Plaintiff, Joe Pia, who indicated he is not opposed to this Motion.

/s/ Stafford Davis
Stafford Davis